

Applicants: Hill et al.
Serial No. 10/039,307
Page 10

REMARKS

In the Office Action all pending claim 1-40 stand rejected. Here claims 1, 2, 4, 5, 15, 17-20 and 23-33 are herewith amended. Applicants respectfully request entry and favorable consideration of the amendments and remarks presented herewith.

Claim Rejections Under 35 U.S.C. §101

Claims 17-27 and 30-40 stand rejected under 35 U.S.C. §101 because the claims are directed to non-statutory subject matter due to inferential claiming of the body.

Applicants herewith amend the offending claims either directly or indirectly and respectfully assert that said claims are now rendered suitably statutory so that said ground of rejection can be properly withdrawn.

Claim Rejections Under 35 U.S.C. §102

Claims 1, 2, 4-13, 15-18, 20-34 and 36-38 stand rejected under 35 U.S.C. §102(b) as anticipated by Obel et al. (Obel).

Applicants respectfully assert that Obel did not in fact anticipate the claims as previously presented and certainly does not include all limitations of the presently presented claims. That is, each of the claims presented herewith include at least one limitation not found in Obel expressly or under principles of inherency. Accordingly, Applicants request that the Examiner withdrawn the rejection of claims 1, 2, 4-13, 15-18, 20-34 and 36-38 based solely upon Obel.

Claim Rejections Under 35 U.S.C. §103

Claims 3, 14, 19, 35, 39, and 40 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Obel in view of either Adams (Adams) or in view of Sweeney et al. (Sweeney).

Applicants: Hill et al.
Serial No. 10/039,307
Page 11

Applicants respectfully suggest that, as amended, Obel essentially fails as a primary reference for the obviousness rejection posted against the presently pending claims.

For example, the claims include limitations regarding the *automatic* and/or essentially (fully or partially) *closed loop* apparatus and methods for providing therapy for ventricular dysfunction, heart failure, imbalances of autonomic tone or endocrinological system or the like. In contrast, neither Obel nor Adams or Sweeney provide any such disclosure or any motivation or suggestion to somehow fashion such systems or methods.


Thus, Applicants suggest that the Examiner has failed to formulate a *prima facie* obviousness rejection and the ground of rejection should be withdrawn and the pending claims allowed to pass to timely issuance as U.S. Letters Patent.

Conclusion

Applicants respectfully suggest that all pending claims are in condition for allowance and the Examiner is earnestly solicited to issue a Notice of Allowance in due course. Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned attorney to attend to these matters.

Respectfully submitted,

Date: 21 Jan. 05


Paul H. McDowall
Reg. 34,873
Telephone: (763) 514-3351
Customer No. 27581